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Crime prevention and criminal justice

Letter dated 11 October 2017 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

I have the honour to submit herewith a draft United Nations Convention on Cooperation in Combating Cybercrime (see annex).

I should be grateful if this letter and its annex could be circulated as a document of the General Assembly under agenda item 107.

(*Signed*) V. **Nebenzia**

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Annex to the letter dated 11 October 2017 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

Draft United Nations Convention on Cooperation in Combating Cybercrime

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Preamble

The States parties to this Convention,

Concerned about the seriousness of the problems and threats posed by crimes in the sphere of information and communications technologies (ICT) to the stability and security of society, which undermine democratic institutions and values, ethical values, and justice, and adversely affect sustainable development and the rule of law,

Concerned also that the criminal misuse of ICT offers ample opportunities for other forms of criminal activities, including money-laundering,

Concerned further about instances of ICT crime involving assets worth significant amounts, which can constitute a substantial proportion of States' resources, and which threaten the political stability and sustainable development of those States,

Convinced that ICT crimes constitute a transnational phenomenon that affects society and the economy of all countries, making international cooperation to prevent and combat such crimes essential,

Convinced also that the technological levels of the information and telecommunications systems of States parties should be brought up to equivalent levels through the provision of technical assistance, which plays an important role in enhancing the capacities of States to effectively prevent crimes and raise the level of information security,

Determined to prevent, detect and suppress more effectively international transfers of assets illicitly acquired as a result of ICT crimes and to strengthen international cooperation in asset recovery,

Bearing in mind that the prevention and eradication of ICT crimes is the responsibility of all States and that States must cooperate with one another to ensure the effectiveness of their efforts in this field, with the support and involvement of individuals and groups from outside the governmental sector, such as civil society, as the overall security of the entire information environment depends on the efforts of each State,

Convinced that cyberspace should be used in strict accordance with generally accepted principles and norms of international law, the principles of respect for human rights and freedoms, and the principles of peaceful settlement of disputes,

Bearing in mind that each State has sovereignty and exercises jurisdiction over its territory with respect to cyberspace in accordance with its domestic law,

Bearing in mind also the principles of fairness, responsibility and equality before the law and the need to foster a culture that does not tolerate ICT crimes,

Have agreed as follows:

Chapter I
General provisions

Article 1
Purposes

The purposes of this Convention shall be as follows:

(a) To promote and strengthen measures aimed at effectively preventing and combating crimes and other unlawful acts in the field of ICT;

(b) To prevent actions directed against the confidentiality, integrity and availability of ICT, and the misuse of ICT, by criminalizing such acts, as described in this Convention, and by providing powers sufficient for effectively combating such offences and other unlawful acts, by facilitating their detection, investigation and prosecution at both the domestic and international level and by developing arrangements for international cooperation;

(c) To improve the efficiency of international cooperation and to develop such cooperation, including in the area of personnel training and the provision of technical assistance for preventing and combating ICT crimes.

Article 2
Scope of application

1. This Convention shall apply, in accordance with its provisions, to the prevention, investigation and prosecution of the offences and other unlawful acts established under articles 6 to 19 of this Convention and to the implementation of measures to detect, deter and eliminate the consequences of such acts, including the suspension of transactions relating to assets obtained as a result of the commission of any offence or other unlawful act established under this Convention, and the seizure, confiscation and return of the proceeds of such crimes.

2. For the purpose of implementing this Convention, it shall not be necessary for the offences and other unlawful acts established in it to result in damage, except as otherwise provided herein.

Article 3
Protection of sovereignty

1. The States parties shall carry out their obligations under this Convention in accordance with the principles of State sovereignty, the sovereign equality of States and non-intervention in the domestic affairs of other States.

2. This Convention shall not authorize a State party to exercise in the territory of another State the jurisdiction and functions that are reserved exclusively for the authorities of that other State under its domestic law.

Article 4
Use of terms

For the purposes of this Convention:

(a) "Seizure of property" means the temporary prohibition of the transfer, conversion, disposition or movement of property, or the temporary assumption of custody or control of property pursuant to an order of a court or other competent authority;

(b) "Botnet" means two or more ICT devices on which malicious software has been installed and which are controlled centrally without the knowledge of users;

(c) "Malicious software" means software the purpose of which is the unauthorized modification, destruction, copying, and blocking of information, or neutralization of software used to secure information;

(d) "Child pornography" shall have the meaning given to that term in the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography;

(e) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence or other unlawful act as established under this convention and domestic law;

(f) "Information and communications technology" (ICT) means an assemblage of methods, processes, hardware and software that have been interconnected for the purpose of generating, transforming, transmitting, utilizing and storing information;

(g) "Property" means assets of every kind, whether movable or immovable, tangible or intangible, and documents or information evidencing title to such assets or any part thereof;

(h) "Information" means any data (messages, records), irrespective of the form in which it is presented;

(i) "Confiscation" means the forcible deprivation of property without compensation pursuant to an order of a court or other competent authority;

(j) "Critical infrastructure facilities" means facilities, systems and institutions of the State which carry out their activities in the interests of the State, national defence or security, including individual security;

(k) "Organized criminal group" means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing one or more of the offences established under this Convention;

(l) "Service provider" means (i) any public or private entity that provides to users of its services the ability to communicate by means of ICT, and (ii) any other entity that processes or stores electronic information on behalf of an entity referred to in (i) above or the users of the services provided by such entity;

(m) "Spam" means electronic messages delivered to parties on an address list (database) who have not communicated to the sending party their addresses for message delivery, have not given their consent to be sent such messages, and are unable to refuse the delivery of such messages from the sending party;

(n) "Traffic data" means any electronic information (excluding the content of the transferred data) relating to the transfer of data by means of ICT and indicating, in particular, the origin, destination, route, time, date, size, duration and type of the underlying network service;

(o) "ICT device" means an assemblage (grouping) of hardware components used/designed for automatic processing and storage of electronic information.

Chapter II
Criminalization and law enforcement

Section 1
Establishment of liability

Article 5
Establishment of liability

1. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the acts envisaged in articles 6 to 12, 15, 18 and 19 of this Convention, while applying such criminal and other penalties, including imprisonment, that take into account the level of public danger posed by a given offence and the magnitude of the damage caused.

2. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the acts envisaged in articles 13, 14, 16 and 17 of this Convention.

3. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the acts envisaged in articles 6, 8, 9, 10 and 15 of this Convention if they are committed against ICT devices of critical infrastructure facilities.

4. Each State party shall ensure that legal persons held liable under article 20 of this Convention are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions.

5. Without prejudice to the norms of general international law, this Convention shall not exclude the possibility of the exercise by a State party of any criminal jurisdiction established in accordance with its domestic law.

Article 6
Unauthorized access to electronic information

Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the intentional unauthorized access to electronic information.

Article 7
Unauthorized interception

Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the intentional interception of electronic information, carried out without appropriate authorization and/or in violation of established rules, using technical means of interception, including the interception of traffic data and data processed by means of ICT that are not intended for public use.

Article 8
Unauthorized data interference

Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the intentional unauthorized modification, blocking, destruction or copying of electronic information.

Article 9
Disruption of ICT operations

Each State party shall adopt such legislative and other measures as are necessary to recognize as an offence or other unlawful act under its domestic law any intentional unauthorized act aimed at disrupting ICT operations.

Article 10
Creation, utilization and distribution of malicious software

1. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the intentional creation, utilization and distribution of malicious software, except for purposes of research.

2. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the creation or

utilization of a botnet for the purpose of committing any of the acts envisaged in articles 6 to 10 of this Convention.

Article 11
Distribution of spam

Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the distribution of spam.

Article 12
Unauthorized trafficking in devices

Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the illegal manufacture, sale, purchase for use, import, export or other form of transfer for use of devices designed or adapted primarily for the purpose of committing any of the offences established under articles 6 to 9 of this Convention.

Article 13
ICT-related theft

1. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the intentional theft of property by means of copying, modification, deletion or suppression of electronic information, or any other interference with ICT operations.

2. Each State party may reserve the right to consider ICT-related theft to be an aggravating circumstance when such theft is committed in such forms as are defined in its domestic law.

Article 14
Offences related to child pornography

Each State party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the production, possession, procurement and processing of child pornography in electronic form, as well as its distribution.

Article 15
Phishing-related offences

1. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the creation and use for unlawful purposes of electronic information capable of being mistaken for data already known and trusted by a user. 2. Each State party may reserve the right to consider such acts to be criminal if they are committed in conjunction with other offences under the domestic law of that State party or involve the intent to commit such offences.

Article 16
Offences related to data protected under domestic law

Each State party shall adopt such legislative and other measures as are necessary to establish as offences under its domestic law the publication, by means of ICT, of electronic information containing data constituting a State secret and bearing appropriate marks proving that the information published is protected under the domestic law of another State party.

Article 17
Use of ICT to commit acts established as offences under international law

1. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the use of ICT for the purpose of committing an act established as an offence under any of the international treaties listed in annex I to this Convention.

2. Upon depositing its instrument of ratification, acceptance, approval or accession, a State that is not a party to a treaty listed in annex I to this Convention may declare that, in the application of this Convention to that State party, the treaty shall be deemed not to be included in the aforementioned annex. The declaration shall cease to have effect as soon as the treaty enters into force for the State party, which shall notify the depositary of that fact.

3. When a State party ceases to be a party to a treaty listed in annex I to this Convention, it may make a declaration, as provided for in this article, with respect to that treaty.

Article 18
ICT-related infringement of copyright and related rights

1. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence or other unlawful act under its domestic law the infringement of copyright and related rights, as defined by the legislation of that State party, when such acts are intentionally committed.2. Each State party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the infringement of copyright, as defined under the legislation of that State party, when such acts are intentionally committed using ICT.

Article 19
Aiding, preparation for and attempt at the commission of an offence

1. Each State party shall adopt such legislative and other measures as are necessary to establish as offences under its domestic law any form of participation, for example, as an accomplice, aider or abettor, in the commission of an offence established as such by the provisions of this Convention.

2. Each State party may adopt such legislative and other measures as may be necessary to establish as offences under its domestic law intentional actions of a person directly aimed at committing an offence, even if the offence is not carried out owing to reasons beyond that person's control.

3. Each State party may adopt such legislative and other measures as may be necessary to establish as offences under its domestic law the manufacture or adaptation of means or instruments of crime by a person, the solicitation of accomplices, conspiring to commit an offence or any other intentional creation of conditions for the commission of an offence, even if the offence is not carried out owing to reasons beyond that person's control.

Article 20
Liability of legal persons

1. Each State party shall adopt such legislative and other legal measures as may be necessary to ensure that legal persons can be held liable for a criminal offence or other unlawful act established in accordance with this Convention, when such offence or act was committed for their benefit by any natural person, acting either individually

or as part of an organ of the respective legal person, who holds a leadership position within it by virtue of:

(a) A power of attorney of the legal person;

(b) Authority to take decisions on behalf of the legal person;

(c) Authority to exercise control within the legal person.

2. In addition to the cases already provided for in paragraph 1 of this article, each State party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence or other unlawful act established in accordance with the provisions of this Convention for the benefit of that legal person by a natural person acting under its authority.

3. Subject to the legal principles applied by the respective State party, the liability of a legal person may be criminal, civil or administrative.

4. Such liability of legal persons shall be without prejudice to the liability of the natural persons who have committed the offence or other unlawful act.

Section 2
Law enforcement

Article 21
Scope of procedural provisions

1. Each State party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures envisaged in this section for the purposes of preventing, suppressing and investigating crimes, and conducting judicial proceedings relating to such crimes.

2. Except as otherwise provided in article 28 of this Convention, each State party shall apply the powers and procedures referred to in paragraph 1 of this article to:

(a) The criminal offences and other unlawful acts established in accordance with articles 6 to 19 of this Convention;

(b) Other criminal offences and other unlawful acts committed by means of ICT;

(c) The collection of evidence, including in electronic form, relating to the commission of criminal offences and other unlawful acts.

3. (a) Each State party may make a reservation to the effect that it retains the right to apply the measures referred to in article 27 of this Convention only to criminal offences or categories of criminal offences specified in the reservation, provided that the range of such criminal offences or categories of criminal offences is not more restricted than the range of criminal offences to which it applies the measures referred to in the provisions of article 28 of this Convention. Each State party shall consider restricting the application of such a reservation to enable the broadest application of the measures provided for under article 27 of this Convention;

(b) If a State party, owing to limitations in its domestic legislation in force at the time of the adoption of this Convention, is not able to apply the measures referred to in articles 27 and 28 of this Convention to the data being transmitted within an information system of a service provider, and that system (i) is being operated for the benefit of a closed group of users, and (ii) does not employ an information and telecommunications network and is not connected with other information systems, that State party may reserve the right not to apply those measures to such data transmission. Each State party shall consider restricting the scope of such a

reservation to enable the broadest application of the measures provided for in the provisions of articles 27 and 28 of this Convention.

4. This Convention shall not apply to cases in which a crime is committed in one State, the alleged criminal is a citizen of that State and is present in the territory of that State, and no other State has any grounds to exercise its jurisdiction, in accordance with the provisions of this Convention.

Article 22
Conditions and safeguards

1. Each State party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this section are subject to conditions and safeguards provided for under its domestic legislation, which shall ensure the adequate protection of human rights and freedoms, including rights arising from the obligations that the State party has undertaken under the International Covenant on Civil and Political Rights of 16 December 1966 and other applicable international human rights instruments.

2. In view of the nature of the powers and procedures concerned, such conditions and safeguards shall include, inter alia, judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such powers or procedures.

3. To the extent that it is consistent with the public interest, in particular as regards the administration of justice, the State party shall consider the impact of the powers and procedures provided for in this section on the rights, responsibility and legitimate interests of third parties.

Article 23
Expedited preservation of stored computer data

1. Each State party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to give adequate orders or instructions or similarly ensure the expeditious preservation of specified computer data, including traffic data, in particular where there are grounds to believe that the data is particularly vulnerable to deletion, copying or modification.

2. If a State party gives effect to the provisions of paragraph 1 of this article by means of an order to a person to preserve specified stored data in the person's possession or control, the State party shall adopt such legislative and other legal measures as may be necessary to oblige that person to preserve such data and maintain its integrity for such period of time as in necessary, up to a maximum of 180 days, to enable the competent authorities to seek disclosure of the data. A State party may provide for such an order to be subsequently renewed.

3. Each State party shall adopt such legislative and other measures as may be necessary to oblige the person who is tasked with preserving the data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic legislation.

4. The powers and procedures referred to in this article shall be subject to the provisions of articles 21 and 22 of this Convention.

Article 24
Expedited preservation and partial disclosure of traffic data

1. Each State party shall adopt, in respect of traffic data that is to be preserved under the provisions of article 23 of this Convention, such legislative and other measures as may be necessary to:

(a) Ensure that such expeditious preservation of traffic data is possible, regardless of how many service providers were involved in the transmission of such information; and

(b) Ensure the expeditious disclosure to the competent authorities of that State party, or a person designated by those authorities, of a sufficient amount of traffic data to enable the respective State party to identify the service providers and the path through which the indicated information was transmitted.

2. The powers and procedures referred to in this article shall be established in accordance with the provisions of articles 21 and 22 of this Convention.

Article 25
Production order

1. For the purposes set out in paragraph 1 of article 21 of this Convention, each State party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

(a) A person in its territory to provide specified computer data in that person's possession or control;

(b) A service provider offering its services in its territory to submit subscriber information in that service provider's possession or control.

2. The powers and procedures referred to in this article shall be established in accordance with the provisions of articles 21 and 22 of this Convention.

3. For the purpose of this article, the term "subscriber information" shall mean any information held by a service provider relating to subscribers to its services other than traffic data or content data, on the basis of which it is possible to establish:

(a) The type of information and communications service used, the technical provisions taken thereto and the period of service;

(b) The subscriber's identity, postal or other addresses, telephone and other access numbers, including IP addresses and billing and payment information, available in the service agreement or arrangement;

(c) Any other information relating to the location of information and telecommunications equipment that has a bearing on the service agreement or arrangement.

Article 26
Search and seizure of stored or processed computer data

1. Each State party shall adopt such legislative and other measures as may be needed to empower its competent authorities to seek access in the territory of that State party to:

(a) ICT devices and computer data stored therein; and

(b) Computer data storage media in which the computer data sought may be stored.

2. Each State party shall adopt such legislative and other measures as may be necessary to ensure that where its competent authorities, conducting a search pursuant to the provisions of paragraph 1 (a) of this article, have grounds to believe that the data sought is stored on another ICT device in the territory of that State party, such authorities shall be able to expeditiously conduct the search to obtain access to that other ICT device.

3. Each State party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize computer data in the territory or under the jurisdiction of the State party, or similarly secure such data. These measures shall include the provision of the following powers:

(a) To seize an ICT device used to store information or to secure it in another way;

(b) To make and retain copies of such computer data;

(c) To maintain the integrity of the relevant stored computer data; and

(d) To remove from the ICT device data stored or processed in electronic form.

4. Each State party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order, under the procedure established by its domestic legislation, any person who has special knowledge about the functioning of the information system in question, information and telecommunications network, or their component parts, or measures applied to protect the information therein, to provide the necessary information and/or assistance in undertaking measures referred to in paragraphs 1 to 3 of this article.

5. The powers and procedures referred to in this article shall be established in accordance with the provisions of articles 21 and 22 of this Convention.

Article 27
Real-time collection of traffic data

1. Each State party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:

(a) Collect or record, employing technical means for this purpose, the traffic data associated with ICT use in the territory of that State party; and

(b) Oblige service providers, to the extent that they possess the technical capacity to do so:

(i) To collect or record traffic data in the territory of that State party, employing technical means for this purpose; or

(ii) To cooperate with and assist the competent authorities of that State party in collecting or recording in real time the traffic data associated with specified information in the territory of that State party.

2. Where a State party, owing to the long-standing principles of its domestic legal system, cannot adopt the measures provided for in paragraph 1 (a) of this article, it may instead adopt such legislative and other measures as may be necessary to ensure the real-time collection or recording of the traffic data in its territory through the application of technical means in that territory.

3. Each State party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the exercise of any power provided for in this article and any information relating to it.

4. The powers and procedures referred to in this article shall be subject to the provisions of articles 21 and 22 of this Convention.

Article 28
Collection of information transmitted by means of ICT

1. Each State party shall adopt such legislative and other measures as may be necessary, in relation to offences provided for by this Convention and established under its domestic legislation, to empower its competent authorities to:

(a) Collect or record, through the application of technical means, in the territory of that State party, information transmitted by means of ICT; and

(b) Oblige a service provider, to the extent that it possesses the technical capacity to do so:

(i) To collect or record, through the application of technical means in the territory of that State party, computer information transmitted by means of ICT; or

(ii) To cooperate with and assist the competent authorities of that State party in collecting or recording in real time computer information transmitted by means of ICT in the territory of that State party.

2. Where a State party, owing to the long-established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1 (a) of this article, it may instead adopt such legislative and other measures as may be necessary to ensure the real-time collection or recording of computer information transmitted by means of ICT in its territory through the application of technical means in that territory.

3. Each State party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the exercise of any power provided for in this article and any information relating to it.

4. The powers and procedures referred to in this article shall be subject to the provisions of articles 21 and 22 of this Convention.

Section 3
Asset recovery

Article 29
General provision

The States parties shall afford one another the widest measure of cooperation and assistance for the recovery of assets in accordance with the provisions of this Convention and domestic legislation, having regard to relevant initiatives of regional, interregional and multilateral organizations to combat money-laundering.

Article 30
Prevention and detection of transfers of proceeds of crime

1. A State party shall take such measures as may be necessary to require, in accordance with domestic legislation, financial institutions within its jurisdiction to verify the identity of customers and beneficial owners who reportedly may be involved in the commission of offences provided for by this Convention, or whose family members or close associates, or other individuals acting on their behalf may be involved, including information on their accounts.

2. A State party shall take all necessary measures, in accordance with its domestic legislation, to require financial institutions to adopt reasonable measures of control

in relation to accounts that persons specified in paragraph 1 of this article have attempted to open or maintain.

3. Measures referred to in paragraphs 1 and 2 of this article shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

4. In order to facilitate the implementation of the measures provided for in paragraphs 1 and 2 of this article, each State party shall, where appropriate, notify financial institutions within its jurisdiction, at the request of another State party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

5. Each State party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, at a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

6. With a view to preventing and detecting transfers of proceeds of offences established in accordance with the provisions of this Convention, each State party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

7. Each State party shall consider establishing, in accordance with its domestic legislation, effective financial disclosure systems for appropriate persons who may reportedly be involved in the commission of offences provided for by the provisions of this Convention, and shall provide for appropriate sanctions for non-compliance. Each State party shall also consider taking such measures as may be necessary to permit its competent authorities to share such information with the competent authorities in other States parties when necessary to investigate and recover proceeds of offences established in accordance with this Convention.

Article 31
Measures for direct recovery of property

Each State party shall, in accordance with its domestic legislation, adopt such legislative or other measures as may be necessary:

(a) To permit another State party, its citizens and stateless persons permanently residing in its territory and legal persons established or having permanent representation in its territory to initiate civil action in the courts of that State party to establish ownership of property acquired through the commission of an offence or other unlawful act established in accordance with this Convention;

(b) To permit its courts to order the payment of compensation or damages in connection with such offences or other unlawful acts established in accordance with this Convention; and

(c) To permit its courts or competent authorities, when having to decide on confiscation, to recognize claims by another State party, its citizens and stateless

persons permanently residing in its territory, and legal persons established or having permanent representation in its territory, to the effect that they are legitimate owners of property acquired through the commission of an offence established in accordance with this Convention.

Article 32
Mechanisms for recovery of property through international cooperation in confiscation

1. Each State party, in order to provide mutual legal assistance with respect to property acquired through the commission of an offence established in accordance with this Convention, or means used in the commission of such offences, shall, in accordance with its domestic legislation:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to orders of confiscation issued by courts of another State party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation, by adjudication of offences of money-laundering, of such property of foreign origin received as a result of crimes established in accordance with the provisions of this Convention;

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases where the offender cannot be prosecuted by reason of death, flight or absence, or in other appropriate cases.

2. Each State party, in order to provide mutual legal assistance at the request of another State party, shall, in accordance with its domestic legislation:

(a) Take such measures as may be necessary to permit its competent authorities to seize property upon a seizure order issued by a court or competent authority of the requesting State party that provides a reasonable basis for the requested State party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for the purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to seize property upon a request that provides a reasonable basis for the requested State party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for the purposes of paragraph 1 (a) of this article;

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge relating to the acquisition of such property.

Article 33
International cooperation for purposes of confiscation

1. A State party that has received a request from another State party having jurisdiction over an offence established in accordance with this Convention for confiscation of property obtained as a result of the commission of offences provided for by this Convention, as referred to in article 35, paragraph 1, of this Convention, or instrumentalities used in the commission of the offence that are situated in its territory shall, to the extent possible within its domestic legislation:"

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities an order of confiscation issued by a court in the territory of the requesting State party, with a view to giving effect to it to the extent requested and to the extent to which it is related to the property situated in the territory of the requested State party obtained as a result of the commission of offences established in accordance with this Convention or to instrumentalities used for such offences.

2. Following a request made by another State party having jurisdiction over an offence established in accordance with this Convention, the requested State party shall take measures to identify or seize property obtained as a result of the commission of offences established in accordance with this Convention, or instrumentalities used for such offences referred to in paragraph 1 (b) of this article, for the purpose of eventual confiscation to be ordered either by the requesting State party or pursuant to a request by that State party under paragraph 1 of this article.

3. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State party in accordance with the provisions of its domestic legislation and any bilateral or multilateral agreements or arrangements by which it may be bound in relations with the requesting State party.

4. Each State party shall furnish to the Secretary-General of the United Nations copies of its laws and regulations that give effect to the provisions of this article and of any subsequent amendments to such laws and regulations or a description thereof.

5. A request submitted under this article may be refused or provisional measures lifted if the requested State party does not receive in a timely manner the order of the competent authorities of the requesting State party or documents required for the competent authorities of the requested State party to adopt that decision.

6. Before lifting any provisional measure taken pursuant to this article, the requested State party shall, wherever possible, provide the requesting State party with an opportunity to present its reasons in favour of continuing the measure.

7. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 34
Special cooperation

Without prejudice to its domestic law, each State party shall endeavour to take measures to forward, on its own initiative and provided that it does not prejudice investigations or judicial proceedings carried out by its own competent authorities, information on property derived from the commission of an offence established in accordance with this Convention to another State party, when it considers that the disclosure of such information might provide grounds for the competent authorities of the receiving State party to initiate an investigation or judicial proceeding or might lead to a request by that State party under this chapter.

Article 35
Return and disposal of property

1. A State party which has confiscated property in accordance with the provisions of this chapter shall dispose of such property, including by returning it to its prior legitimate owners, in accordance with paragraph 3 of this article and its domestic law.

2. Each State party shall adopt all necessary legislative and other measures to enable its competent authorities to return confiscated property, when acting on a request made by another State party in accordance with this Convention, taking into account the rights of bona fide third parties and in accordance with its domestic law.

3. In accordance with article 35 of this Convention and paragraphs 1 and 2 of this article, the requested State party shall:

(a) In the case of the embezzlement of public property confiscated in accordance with article 35 of this Convention and on the basis of a final judgment made in the requesting State party, a requirement that can be waived by the requested State party, return the confiscated property to the requesting State party;

(b) In all other cases, give priority consideration to returning the confiscated property to its prior legitimate owners or paying compensation or damages to the victims of the offence.

4. Where appropriate, unless States parties decide otherwise, the requested State party may deduct reasonable expenses incurred in investigations or judicial proceedings leading to the return or disposal of confiscated property pursuant to this article.

5. With a view to reaching mutually acceptable arrangements on the final disposal of confiscated property, States parties may hold consultations and conclude separate agreements.

Chapter III
Measures to prevent and combat offences and other unlawful acts in cyberspace

Article 36
Policies and practices to prevent and combat offences and other unlawful acts relating to ICT use

1. Each State party shall, in accordance with the fundamental principles of its legal system, develop and implement or pursue an effective and coordinated policy to combat offences and other unlawful acts relating to ICT use.

2. Each State party shall endeavour to establish and promote effective practices to prevent offences and other unlawful acts relating to ICT use.

3. The States parties shall, as appropriate and in accordance with the fundamental principles of their legal systems, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article.

Article 37
Bodies responsible for preventing and combating offences and other unlawful acts relating to ICT use

1. Each State party shall take all legislative and other legal measures necessary to designate authorities responsible for activity to prevent and combat offences and other unlawful acts relating to ICT use, and establish procedures for the interactions between such authorities.

2. Each State party shall inform the Secretary-General of the United Nations of the name and address of the authority/authorities who may assist other States parties in developing and implementing specific measures to prevent offences and other unlawful acts relating to ICT use.

Article 38
Private sector

1. Each State party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent offences and other unlawful acts relating to ICT use in the private sector, enhance information security standards in the private sector and, where appropriate, impose and apply effective, proportionate and dissuasive civil, administrative and criminal sanctions for failure to comply with such measures.

2. Measures aimed at attaining these goals may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures to ensure information security;

(c) Promoting training programmes for law enforcement, investigative, judicial and prosecutorial officials.

Article 39
Principles and codes of conduct for private providers of information and telecommunications services

1. Each private provider (or grouping of such providers) of information and telecommunications services located in the territory of a State party shall take appropriate measures, within its power and in accordance with the law of the State where it is located, to support the establishment and implementation of principles and standards for the use of international cyberspace, based on respect for human rights as guaranteed by fundamental instruments of the United Nations.

2. Measures aimed at attaining these goals may include, inter alia:

(a) Cooperation among private providers of information and telecommunications services or groupings of such providers;

(b) Cooperation in developing principles and standards for creating an enabling environment for the construction of civilized society as an integral part of international cyberspace.

Article 40
Raising public awareness of cybercrime prevention

1. Each State party shall take appropriate measures, within its power and in accordance with the fundamental principles of its domestic law, to promote the active involvement of individuals and groups, including non-governmental and public organizations, in the prevention of offences and other unlawful acts relating to ICT use, and to raise public awareness of those offences, their causes and seriousness, as well as of the threats that they pose. This involvement should be backed by the following measures:

(a) The provision of effective public access to information;

(b) The conduct of public consciousness-raising activities to promote zero tolerance of offences and other unlawful acts relating to ICT use;

(c) The conduct of public education training programmes on ICT security.

2. Each State party shall take appropriate measures to ensure that the public is aware of the relevant bodies responsible for combating offences and other unlawful

acts relating to ICT use referred to in this Convention, and provide access to such bodies for the reporting of any incidents that may be considered offences and other unlawful acts in accordance with this Convention.

Chapter IV
International cooperation

Section 1
General principles of international cooperation and mutual assistance

Article 41
General principles of international cooperation

1. The States parties shall cooperate to the fullest extent possible in accordance with the provisions of this chapter and pursuant to relevant international instruments on international cooperation in criminal matters and agreements reached on the basis of a model or mutually agreed law, as well as domestic laws, with a view to preventing, suppressing, detecting and investigating offences relating to ICT use.

2. When the requirement of mutual recognition must be met in order for an action to be regarded as an offence for the purposes of international cooperation, that requirement shall be considered as applicable irrespective of whether the law of the requested State party defines the action as the same category of offence or describes it in the same terms as the requesting State party, when the action constituting the offence in respect of which assistance is requested is criminalized under the legislation of both States parties.

3. States parties shall consider providing mutual assistance in the investigation and prosecution of civil and administrative cases related to unlawful acts relating to ICT use, as appropriate and as permitted by domestic legal systems.

4. For the purpose of mutual legal assistance and extradition between the States parties, neither offence referred to in articles 6 to 18 of this Convention shall be considered as a political offence, an offence associated with a political offence or a politically motivated offence. Accordingly, a request for legal assistance or extradition related to such offence shall not be rejected solely on the grounds that it relates to a political offence, an offence associated with a political offence or a politically motivated offence.

Article 42
General principles of mutual legal assistance

1. The States parties shall provide mutual legal assistance for the purpose of investigations or judicial proceedings with respect to offences and other unlawful acts relating to ICT use.

2. Each State party shall also take all legislative and other measures necessary to comply with the obligations provided for in articles 47, 48, 50 to 54, and 57 of this Convention. Each State party shall also consider extending (or waiving) a time limit in order to prevent the evasion of liability.

3. In the event of an emergency, a State party may send requests for mutual legal assistance or communications related thereto by expedited means of communication, including fax or email, provided that such means afford appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested State party. The requested State party shall accept and respond to the request by any expedited means of

communication. The requested State party may reserve the right to forward a response after the receipt of the original request.

4. Unless otherwise specifically provided for in the articles in this chapter, mutual legal assistance shall be subject to the provisions contained in the law of the requested State party or in applicable mutual legal assistance agreements, including the list of grounds for non-cooperation to which the requested State party may refer.

Article 43
Jurisdiction

1. Each State party shall take all measures necessary to establish jurisdiction over offences and other unlawful acts established in accordance with this Convention, when they are committed:

(a) In the territory of that State party; or

(b) Onboard a vessel flying the flag of that State party when the offence was committed, or onboard an aircraft registered under the law of that State party at that time.

2. Subject to article 3 of this Convention, a State party may also establish its jurisdiction over any such offence and other unlawful act when:

(a) The offence is committed against a national of that State party, a stateless person permanently residing in its territory, a legal person established or having a permanent representation in its territory, or a diplomatic mission or consular office of that State party; or

(b) The offence is committed by a national of that State party or a stateless person whose habitual residence is in its territory; or

(c) The offence is committed against that State party.

3. For the purposes of article 48 of this Convention, each State party shall take all measures necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and the State party does not extradite such person solely on the ground that he or she is a national of that State party or a person to which it has granted refugee status.

4. Each State party in whose territory an alleged perpetrator is present and which does not extradite such person shall, in cases provided for in paragraphs 1 and 2 of this article, without any exception and regardless of whether the offence was committed in the territory of that State party, submit the case without further delay to its competent authorities for the purpose of legal prosecution in accordance with the law of that State.

5. If a State party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified or has otherwise learned that any other States parties are investigating, prosecuting or conducting a judicial proceeding with respect to the same act, the competent authorities of those States parties shall, as appropriate, consult each other with a view to coordinating their actions.

6. Without prejudice to general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law.

Article 44
Provision of information *proprio motu*

1. A State party may, in accordance with its domestic law and without the prior request of another State party, forward information gathered during its own investigation if it believes that the disclosure of such information could help that other State party to initiate or conduct an investigation or judicial proceeding relating to offences or other unlawful acts established in accordance with this Convention, or might result in a cooperation request from that State party under the provisions of this chapter.

2. Before providing such information, the State party concerned may require that the confidentiality of the information be maintained or may stipulate certain conditions for its use. If the receiving State party is not in a position to accede to such a request, it shall notify the providing State party, which will decide whether the information should still be provided. If the receiving State party accepts the information under the above-mentioned conditions, those conditions shall be binding for that State party.

Article 45
Transfer of criminal proceedings

The States parties shall consider transferring to another State party proceedings relating to the criminal prosecution of an offence established in accordance with this Convention where such transfer is deemed to be in the interests of the proper administration of justice, in specific cases involving several jurisdictions, with the aim of ensuring the consolidation of criminal cases.

Article 46
Procedures for sending requests for mutual assistance in the absence of applicable international agreements

1. Where no mutual legal assistance treaty or agreement exists between the requesting and the requested State party, the provisions of paragraphs 2 to 8 of this article shall be applied. If such treaty or agreement exists, the provisions of this article shall not be applied unless the States parties concerned agree to apply in place of the aforementioned instruments any or all of the provisions of this article as set out below.

2. (a) Each State party shall designate a central authority or authorities for the transmission of requests for mutual legal assistance and for responding to them, granting such requests or referring them to the competent authorities;

(b) The central authority or authorities referred to in subparagraph (a) above shall communicate directly with one another;

(c) Each State party shall, on signing this Convention or depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary-General of the United Nations of the names and addresses of the authorities designated in accordance with this paragraph;

(d) The Secretary-General of the United Nations shall compile and update the register of central authorities designated by the States parties. Each State party shall ensure on a regular basis that the information contained in the register is current.

3. When granting a request for mutual legal assistance, the requested authority shall apply the law of its State. If the requesting authority so requests, the legal procedures of the requesting State may be applied provided that they are not inconsistent with the legislation of the requested State party.

4. In addition to the grounds for refusal provided for in article 43, paragraph 4, the requested State party may refuse legal assistance if:

(a) The request concerns an offence which the requested State party considers to be an offence against the State or related offence;

(b) It considers that carrying out the request will undermine its sovereignty, security, *ordre public* or other vital interests.

5. The requested State party may postpone taking measures in response to the request if such measures interfere with criminal investigations or judicial proceedings being conducted by its authorities.

6. Before refusing or postponing legal assistance, the requested State party shall consider granting the request in part or subject to such conditions as it deems appropriate, after consultations with the requesting State party, as necessary.

7. The requested State party shall, as promptly as possible, inform the requesting State party of the disposition of the request for legal assistance. In the event that the request is refused or its granting is postponed, the requesting State party shall be notified of the reasons for such refusal or postponement. The requested State party shall also inform the requesting State party of any reasons for which the request will not be granted or will likely be granted after a substantial delay.

8. The requesting State party may request the requested State party to keep confidential the facts and the subject matter of the request submitted in accordance with the provisions of this chapter, but only to the extent that this is consistent with the carrying out of the request. If the requested State party cannot comply with the request for confidentiality, it shall promptly notify the requesting State party of this fact; the requesting State party shall then decide whether the request should still be made.

Article 47
Confidentiality and limitations on the use of information

1. Where no mutual legal assistance treaty or agreement exists between the requesting and the requested State party based on a model or mutually agreed law, the provisions of this article shall be applied. If such treaty, agreement or law exists, the provisions of this article shall not be applied unless the States parties concerned agree to apply in place of the aforementioned instruments any or all of the provisions of this article set out below.

2. In response to the request, the requested State party may set conditions for the provision of information or material:

(a) The information or material must be kept confidential, if, absent such condition, the request for mutual legal assistance could not be granted;

(b) The information or material must not be disclosed in respect of other investigations or legal proceedings not referred to in the request.

3. If the requesting State party cannot comply with any condition referred to in paragraph 2 of this article, it shall promptly notify the other State party to that effect; the other State party shall then decide whether such information can be provided. If the requesting State party agrees to comply with those conditions, they shall become binding for that State party.

4. Any State party providing information or data subject to the conditions referred to in paragraph 2 of this article may request clarification from the other State party on any of the conditions imposed on the use of such information or material.

Article 48
Extradition

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of a request for extradition is present in the territory of the requested State party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State party and the requested State party by imprisonment for at least one year or by a heavier penalty.

2. The criminal offences provided for in articles 6 to 20 of this Convention shall be deemed extraditable offences under any existing extradition treaty between the States parties. States parties undertake to include such offences as extraditable offences in any future extradition treaty between them. A State party whose domestic law so permits, where it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

3. If the request for extradition concerns several separate offences, at least one of which is extraditable under this article, while others are not extraditable owing to the penalties applicable to them but are considered as offences established in accordance with this Convention, the requested State party may also apply this article in respect of such offences.

4. If a State party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, this Convention may be considered as a legal basis for extradition in respect of any offence to which this article applies.

5. A State party that makes extradition conditional on the existence of a treaty shall:

(a) when depositing its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will apply this Convention as a legal basis for cooperation on extradition with other States parties to this Convention; and

(b) if it does not apply this Convention as a legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States parties to this Convention in order to apply this article.

6. States parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article is applicable as extraditable offences as between them.

7. Extradition shall be subject to the conditions provided for in the domestic law of the requested State party or in relevant extradition treaties, including, inter alia, conditions relating to the minimum penalty requirements for extradition and the grounds upon which the requested State party may refuse extradition.

8. States parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting State party, take into custody a person whose extradition is sought and who is present in its territory or take other appropriate measures to ensure that person's presence at extradition proceedings.

10. If a State party in whose territory an alleged offender is found does not extradite such a person in connection with an offence to which this article applies, it shall, without exception, at the request of the State party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State party. The States parties concerned shall cooperate with each other, in particular on procedural and evidentiary matters, to ensure that such prosecution is effective.

11. Where a State party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only on the condition that the person will be returned to that State party to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought and that State party and the State party requesting the extradition agree on that procedure and such other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. Any person regarding whom proceedings are being conducted in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for by the domestic law of the State party in the territory of which that person is present.

13. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State party has substantial grounds for believing that the extradition request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality or ethnic origin or that compliance with the request would cause prejudice to that person's position for any one of those reasons.

14. Before refusing extradition, the requested State party shall, where appropriate, consult with the requesting State party in order to provide it with ample opportunities to present its views and to provide information relevant to the facts set forth in its request.

15. States parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out extradition or enhance its effectiveness.

Article 49
Transfer of sentenced persons

States parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

Article 50
Expedited preservation of electronic information

1. A State party may request another State party to order or otherwise obtain the expeditious preservation of information stored or processed by means of ICT in the territory of that State party and in respect of which the requesting Party intends to send a request for the search, seizure or other preservation of that information within the framework of mutual legal assistance.

2. A request for the preservation of information made under paragraph 1 of this article shall specify:

(a) The name of the requesting authority;

(b) A summary of the basic facts and the nature of the investigation, prosecution or judicial proceeding to which the request relates;

(c) The electronic information to be preserved and its relationship to the relevant offence;

(d) Any available data identifying the custodian of the information or the location of the ICT device;

(e) The rationale for the preservation of the information;

(f) The communication that the State party intends to submit in the framework of mutual legal assistance requesting the search, seizure or similar preservation of the information.

3. Upon receiving a request from another State party, the requested State party shall take appropriate measures in accordance with its domestic law to preserve expeditiously the information specified in paragraph 1 of this article. The requested State party may fulfil the request in its entirety or in part to ensure the preservation of information, even if the act constituting the grounds for a request is not criminalized in the requested State party.

4. A request for the preservation of information may be refused if the requested State party considers that the exercise of the request could prejudice its sovereignty, security or other essential interests.

5. Where the requested State party believes that the execution of the request referred to in paragraph 1 of this article would not ensure the future preservation of information or would jeopardize confidentiality or otherwise prejudice the investigation, prosecution or judicial proceeding, it shall promptly inform the requesting State party to that effect. On the basis of that notification, the requesting State party shall determine whether the request should be executed.

6. Any preservation effected in response to the request referred to in paragraph 1 of this article shall be for a period of not less than 180 days, in order to enable the requesting State party to submit a request for the search, seizure or other preservation of information. Following the receipt of such a request, the requested State party shall preserve that information pending a decision on that request.

Article 51
Expedited disclosure of preserved traffic data

1. When, in the course of executing a request for the preservation of information made pursuant to article 50 of this Convention, the requested State party discovers that a service provider in another State was involved in the transmission of the information, the requested State party shall expeditiously disclose to the requesting State party a sufficient amount of traffic data to identify that service provider and the path through which the information whose preservation is sought was transmitted.

2. The request to preserve information may be refused if the requested party considers that executing the request may prejudice its sovereignty, security or other essential interests.

Article 52
Law enforcement cooperation

1. The States parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of

law enforcement action to combat the offences covered by this Convention. The States parties shall, in particular, adopt effective measures aimed at:

(a) Enhancing and, where necessary, establishing channels of communication between their competent authorities, agencies and services in order to facilitate the secure and prompt exchange of information concerning all aspects of the offences covered by this Convention, including, if the States parties concerned deem it appropriate, connections to other criminal activities;

(b) Cooperating with other States parties in conducting inquiries with respect to offences covered by this Convention to discover:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds from offences or property obtained through the commission of such offences;

(iii) The movement of property, equipment or other assets used or intended for use in the commission of such offences;

(c) Providing items that were used to commit such offences, including instruments of crime; items obtained as a result of the offences or as a reward for them; items obtained by the perpetrator in exchange for items obtained in such a way; and items that may have evidentiary value in the criminal case;

(d) Exchanging, as appropriate, information with other States parties on specific means and methods used to commit offences covered by this Convention, including the use of false identities; false, altered or forged documents; or other means of concealing unlawful activities;

(e) Facilitating effective coordination between their competent authorities, agencies and services and promoting the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States parties concerned, the secondment of liaison officers;

(f) Exchanging information that is of interest and taking coordinated measures for the purpose of early detection of the offences covered by this Convention.

2. With a view to implementing this Convention, the States parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States parties concerned, the States parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States parties shall make full use of agreements or arrangements, including mechanisms of international or regional organizations, to enhance the cooperation between their law enforcement agencies.

Article 53
Mutual assistance regarding the real-time collection of traffic data

1. A State party shall, at the request of another State party, carry out the real-time collection of traffic data in its territory or territory under its jurisdiction and, subsequently, in accordance with the procedures provided for by its domestic law, transmit the collected information, on relevant grounds, if any.

2. Each State party shall consider providing mutual legal assistance in relation to offences and other unlawful acts for which the real-time collection of traffic data is provided for by its domestic law.

3. A request sent in accordance with paragraph 1 of this article shall specify:

(a) The name of the requesting authority;

(b) A summary of the basic facts and the nature of the investigation, prosecution or judicial proceeding to which the request relates;

(c) The electronic information in relation to which the collection of the traffic data is required and its relationship to the relevant offence or other unlawful act;

(d) Any available data that identifies the owner/user of the information and the location of the ICT device;

(e) The period of collection of the traffic data;

(f) The reasons for collecting the traffic data;

(g) The reasons for choosing the specified period for collecting the traffic data.

Article 54
Mutual assistance regarding the collection of electronic information

A State party shall, in its territory or territory under its jurisdiction, carry out the real-time collection of electronic information transmitted by means of ICT, in accordance with procedures provided for by its domestic law. Such information shall be provided to another State party in accordance with domestic law and existing mutual legal assistance agreements.

Article 55
Joint investigations

The States parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to cases that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States parties involved shall ensure that the sovereignty of the State party in whose territory such an investigation is to take place is fully respected.

Article 56
Special investigative techniques

1. With a view to effectively combating offences relating to ICT use, each State party, to the extent permitted by the fundamental principles of its domestic law and subject to the conditions prescribed by its domestic law, shall, as far as it able, take such measures as may be necessary to allow for the appropriate use of special investigative techniques, such as electronic or other forms of surveillance, and undercover operations, by its competent authorities in its territory so that the evidence gathered through such methods is acceptable before the courts.

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, as necessary, appropriate bilateral or multilateral agreements or arrangements for the use of such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of the

sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as envisaged in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, as necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States parties concerned.

Article 57
24/7 network

1. Each State party shall designate a point of contact available on a 24-hours-a-day, 7-days-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations, prosecutions or judicial proceedings concerning criminal offences related to computer systems and data, or for the electronic gathering of evidence relating to criminal offences. Such assistance shall include facilitating or, if permitted by its domestic law and practice, directly carrying out the following measures:

(a) The provision of technical advice;

(b) The preservation of data to gather evidence and subsequently to provide legal information in accordance with its domestic law and existing mutual legal assistance agreements.

2. Each State party shall take measures to ensure that trained personnel and equipment are available in order to facilitate the operation of the network.

Section 2
Technical assistance and training

Article 58
General principles of technical assistance

1. The States parties shall, to the extent that they are able, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries for their respective plans and programmes to combat ICT crimes including material support and training in the areas referred to in article 60 of this Convention, as well as training and assistance and the mutual exchange of relevant experience and expertise, which will facilitate international cooperation between States parties on extradition and mutual legal assistance.

2. The States parties shall strengthen, to the extent necessary, efforts to maximize the effectiveness of operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

3. The States parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes and effects of ICT crimes committed in their respective countries, with a view to developing, with the participation of the competent authorities, society and the private sector, strategies and action plans to combat these types of offences.

4. The States parties shall consider establishing voluntary mechanisms with a view to providing financial assistance for the efforts of developing countries and countries with economies in transition through technical assistance programmes and projects.

5. The States parties shall entrust the United Nations Office on Drugs and Crime with the task of providing specialized technical assistance to States parties with a

view to promoting the implementation of programmes and projects to combat ICT crimes.

Article 59
Training

1. Each State party shall, as necessary, develop, implement or improve specific training programmes for its personnel responsible for preventing and combating ICT crimes. Such training programmes could cover, inter alia, the following areas:

(a) Effective measures to prevent, detect and investigate ICT crimes, as well as to punish and combat them, including the use of electronic evidence-gathering and investigative techniques;

(b) Capacity building for the development and planning of a strategic policy to combat ICT crimes;

(c) Training of staff of competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Prevention of the transfer of proceeds of offences established in accordance with this Convention and recovery of such proceeds;

(e) Detection and blocking of transactions related to the transfer of proceeds of offences established in accordance with this Convention;

(f) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(g) Appropriate and efficient legal and administrative mechanisms and methods facilitating the seizure of proceeds of offences established in accordance with this Convention;

(h) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(i) Training of staff in national and international regulations and language training.

2. The States parties shall entrust the United Nations Office on Drugs and Crime with the task of providing specialized training assistance to States parties with a view to promoting the implementation of national programmes and projects to combat ICT crimes.

Article 60
Exchange of information

1. Each State party shall consider analysing, in consultation with relevant experts, trends with respect to ICT crimes in its territory, as well as the circumstances in which such offences are committed.

2. The States parties shall consider disseminating statistics and analysis concerning ICT crimes with a view to developing, to the extent possible, common definitions, standards and methodologies, including best practices to prevent and combat such offences, and share them with one another and through international and regional organizations.

3. Each State party shall consider monitoring its policies and practical measures to combat ICT crimes, as well as assessing their effectiveness.

Chapter V
Mechanisms for implementation

Article 61
Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States parties to achieve the objectives set forth in this Convention and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular sessions of the Conference shall be held in accordance with the rules of procedure adopted by the Conference of the States Parties.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States parties under articles 59 and 60 and chapters II to V of this Convention, including by encouraging voluntary contributions;

(b) Facilitating the exchange of information among States parties on patterns and trends with respect to ICT crimes and on successful practices for preventing and combating them and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing ICT crimes, in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by the States parties thereto;

(f) Making recommendations to improve this Convention and its implementation;

(g) Identifying the technical assistance requirements of States parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by the States parties in implementing this Convention and the difficulties encountered by them in so doing, through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most

effective ways of receiving and acting upon information, including, inter alia, information received from States parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 62
International Technical Commission on Combating ICT Crime

1. In accordance with this Convention, the Conference of the States Parties shall create and establish the International Technical Commission on Combating ICT Crime to assist States in the review of the implementation of the Convention.

2. The Commission shall be a permanent body, consisting of 23 members and shall be created on the basis of the principles of mixed representation: two thirds of the members shall represent the Conference of the States Parties, and one third shall represent the governing bodies of the International Telecommunication Union.

3. The members of the Commission shall be experts with significant direct experience in diplomacy, international law, communications technologies or relevant research.

4. The members of the Commission shall serve for a term of five years and may be reappointed.

5. The sessions of the Commission shall be convened at least once a year and shall be held at the Commission's headquarters at the United Nations Office on Drugs and Crime, or at a time and place indicated or approved by the Conference of the States Parties.

6. The Commission shall adopt its own rules of procedure, which are to be approved by the Conference of the States Parties.

7. The Commission shall assess the technological progress made in the field of ICT.

8. The Commission, through the Conference of the States Parties, shall report on the results of its work to the States parties and interested international organizations.

9. If necessary, the Commission shall make recommendations to the Conference of the States Parties on amendments to the technical annex to this Convention. Decisions on such recommendations shall be taken by consensus.

10. Upon the recommendation of the Commission, the Conference of the States Parties may suggest to the States Parties amendments to the technical annex to this Convention.

Article 63
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The Secretariat shall:

(a) Make arrangements and provide the necessary services for the sessions of the Conference of the States Parties and the International Technical Commission;

(b) Upon request, assist States parties in providing information to the Conference of the States Parties; and

(c) Ensure the necessary coordination with the secretariats of other relevant international and regional organizations.

Chapter VI
Final provisions

Article 64
Implementation of the Convention

1. Each State party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State party may adopt stricter or more severe measures than those provided for by this Convention for the prevention and combating of ICT crimes.

Article 65
Settlement of disputes

1. The States parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States parties, be submitted to arbitration. If six months after the date of the request for arbitration, the States parties concerned are unable to agree on arrangements for the arbitration, any one of those States parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State party may, at the time of its signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States parties shall not be bound by the provisions of paragraph 2 of this article with respect to any State party that has made such a reservation.

4. A State party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 66
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by all States.

2. This Convention shall also be open for signature by regional organizations, provided that at least one of its members has signed this Convention in accordance with paragraph 1 of this article.3. This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 67
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

For the purposes of this paragraph, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State party or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State party or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 68
Amendments

1. Five years after the entry into force of this Convention, a State party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States parties and to the Conference of the States Parties to the Convention for the purposes of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts to achieve consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their States parties. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article shall be subject to ratification, acceptance or approval by States parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State party 90 days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such an amendment.

5. When an amendment enters into force, it shall be binding on those States parties which have expressed their consent to be bound by it. Other States parties shall continue to be bound by the provisions of this Convention or any earlier amendments that they have ratified, accepted or approved.

Article 69
Reservations

Each State party may declare that it will exercise the right to make a reservation regarding the application of this Convention, when signing or depositing its instrument of ratification or accession, by means of a notification in writing addressed to the Secretary-General of the United Nations. Reservations to articles 14, 16 and 17 and article 48, paragraph 10, will not be accepted.

Article 70
Revision of annex I

1. Any State party may propose amendments to the list of international legal instruments contained in annex I to this Convention.

2. The Secretariat shall be responsible for monitoring newly adopted international legal instruments that may affect the scope of application of this Convention and shall

submit proposed amendments to annex I to the next session of the Conference of the States Parties.

3. Proposed amendments should pertain only to universal and regional international legal instruments which have entered into force and are directly related to international crime.

4. The Secretary-General shall transmit draft amendments proposed in accordance with paragraph 1 of this article to the States parties. If one third of the total number of the States parties which have ratified this Convention notify the Secretary-General of their objections to the entry into force of the amendment within six months from the date of transmittal of the draft amendment, such amendment shall not enter into force.

5. If within six months from the transmittal of the draft amendment fewer than one third of the total number of the States parties that have ratified this Convention file with the Secretary-General their objections to the entry into force of the amendment, such an amendment shall enter into force for the States parties not objecting to it 30 days after the end of the six-month period for filing objections.

6. The Conference of the States Parties shall adopt an amendment by a two-thirds majority vote of all States parties that have ratified this Convention. Such an amendment shall enter into force for the States parties that have expressed their consent to apply the amendment 30 days after the date of the adoption of the amendment.

7. If, after an amendment has entered into force in accordance with the provisions of this article, any State party has sent to the Secretary-General a notification of its objection to the amendment, such amendment shall enter into force for the respective State party 30 days after the date on which it notifies the Secretary-General of acceptance of the amendment.

Article 71
Denunciation

1. A State party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a party to this Convention when all States participating in such organization have denounced this Convention.

Article 72
Depositary and languages

1. The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

Annex I

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963)

2. Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970)

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973)

4. International Convention against the Taking of Hostages (New York, 17 December 1979)

5. Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980)

6. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988)

7. International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997)

8. International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999)

9. International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 13 April 2005)

10. Convention on Extradition and Mutual Legal Assistance in Counter-terrorism (New York, 16 May 2008)

11. United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)

12. United Nations Convention against Corruption (New York, 31 October 2003)

13. Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (Beijing, 10 September 2010) [replacing the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation]

14. Single Convention on Narcotic Drugs (New York, 30 March 1961)

15. Convention on Psychotropic Substances (Vienna, 21 February 1971)

16. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 19 December 1988)

Technical annex

Type	*Name*	*Description*
1. Software	Worms	A malicious program that spreads itself through local and global computer networks
	Viruses	A malicious self-replicating program
	Trojans	A malicious program that performs unauthorized functions in the system
	Rootkit	A program or program kit designed to hide the presence of an intruder or a malicious program in the system
	Bootkit	A program modifying the MBR boot sector
	Exploit	A program or a sequence of commands taking advantage of software vulnerabilities to attack the computer system. The attack may be aimed at gaining control of the system (privilege escalation) or its failure (DoS attack)
	Constructor	Programs for developing malicious programs
	Cryptor	A program for hiding malicious software
	Backdoor	A malicious software for hidden control of the computer
	Bruteforcer	A program for cracking passwords
	Keylogger	A malicious program capturing keystrokes
	Sniffer	A network traffic analyser
	Keygen	Key generator
	Traffic Generator	A malicious program generating spurious traffic
	Clicker	A malicious program that simulates banners and clicks on them
2. Hardware	Skimmer	An attachable device that captures information from the magnetic stripe of a card for subsequent copying
	Encoder (reader)	A device that reads/records information on a magnetic stripe
	Embosser	A device for embossing plastic cards
3. Special intelligence technical tools	SITT 1	Devices for the hidden obtaining and recording of acoustic information
	SITT 2	Devices for hidden visual observation and recording
	SITT 3	Devices for hidden eavesdropping on telephone conversations
	SITT 4	Devices for the hidden capturing and recording of information from technical communications channels

Type	*Name*	*Description*
	SITT 5	Devices for the hidden control of email messages and transmissions
	SITT 6	Devices for the hidden examination of items and documents
	SITT 7	Devices for hidden access to and examination of premises, vehicles and other facilities
	SITT 8	Devices for the hidden control of movements of vehicles and other items
	SITT 9	Devices for the hidden obtaining (modifying, erasing) of information from technical media designed for its storage, processing and transfer
	SITT 10	Devices for hidden identity check